HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE P. LAKSHMANA REDDY

WRIT PETITION No.482 of 2006 (Amended)

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Between:

Ameer Khan. ….. Petitioner

And

The Commissioner of Prohibition and

Excise, State of Andhra Pradesh,

Hyderabad and others. …. Respondents

Counsel for the petitioner : Shri G. Vidyasagar for

Shri B. Shiva Kumar.

Counsel for Respondents : Government Pleader for

1, 2 and 4. Prohibition and Excise.

Counsel for Respondent No.3 : Shri M. Papa Reddy

Dated: April 10, 2006

ORDER

Per G.S. Singhvi, CJ

In this petition, filed in public interest, the petitioner has prayed for striking down Rule 27 of Andhra Pradesh Excise (Lease of Right of Selling by Shop & Conditions of Licence) Rules, 2005 (for short, 'the Rules') in so far as it permits opening of shop near the places of public worship, educational institutions and hospitals in Municipal Corporation areas. The other prayer made by the petitioners is to quash the permission/licence granted to respondent No.3 to open retail wine shop near Aradhana Public School, Lalithabagh, Hyderabad.

The petitioner is a resident of Patelnagar, Lalitabagh, Hyderabad. He has averred that on the strength of licence granted by the official respondents, respondent No.3 – Vaishnavi Wines opened a retail wine shop adjacent to the building of Aradhana

Public School. He has further averred that the owner of the wine shop is illegally running open bar at the backside of the shop and those consuming liquor in the open bar are creating nuisance for the residents of the colony and others using the thoroughfare for going to railway station. Still further he has averred that despite complaint made to the Commissioner of Prohibition and Excise and District Collector, Hyderabad, no action has been taken to shift the wine shop from its present location.

In the counter-affidavit filed to the unamended writ petition, Shri V. Ramakrishna, Prohibition and Excise Superintendent, Dhoolpet, Hyderabad has averred that licence was granted to respondent No.3 in accordance with the provisions of the Rules and the said respondent was allowed to open the shop at the present site in accordance with Rule 27 of the Rules. Sri Ramakrishna has further averred that the exception enumerated in Rule 27(1) of the Rules is applicable to the case of respondent No.3 because its Indian Liquor IL A4 shop is situated in Ward No.60, Gowlipura of the Municipal Corporation of Hyderabad. He has then averred that as and when complaints regarding illegal running of the open bar and nuisance created by the consumers of liquor are brought to the notice of the concerned authority, appropriate action will be taken in accordance with law.

We have heard learned counsel for the parties and perused the record. For deciding whether the wine shop of respondent No.3 could be located in premises adjacent to Aradhana Public School and whether Rule 27 of the Rules is unconstitutional, it is apposite to notice the relevant statutory provisions. Section 17 of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act') empowers the State Government to grant lease or licence for the exclusive privilege of manufacturing or of supplying by wholesale or of both or of selling by wholesale or by retail any liquor or other intoxicant within such area as may be specified in the order of grant. Section 72 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. In exercise of the powers conferred by Section 72 read with sections 17, 2 and 29 of the Act and Ordinance 5 of 2005, the State Government framed the Rules. Rule 2(p) of the Rules defines 'licensed premises' to mean premises where IL & FL is permitted to be sold by the leaseholder. Rule 2(t) defines the term 'shop' to mean a privilege granted under the Rules for sale of Indian Liquor or Foreign Liquor in sealed or capsuled bottles or packages or tins to an individual in quantities not exceeding the limits as prescribed without permitting consumption on the licensed

premises. Rule 27, which provides for selection of premises and Rule 29 which contemplates sale at the licensed premises only, read as under:

"27. **Selection of Premises**:-

(1) The successful tenderer subject to the approval of Prohibition and Excise Superintendent, shall select suitable premises for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be as notified in the District Gazette. It shall be at least 100 meters away from the place of Public worship, Educational Institutions, Hospitals and 50 meters away from Highways except in Municipal Corporations and 5 kms. belt area of the periphery of Municipal Corporations.

Explanation:- For the purpose of this rule-

(a) "place of public worship' means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf,

(b) "Educational Institutions" means any Primary School, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law,

(c)"High Way" means National High Way or State High way and shall not passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area,

(d)"Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds,

(2) The distances referred above shall be measured from the mid-point of the entrance of the licensed premises along with the nearest path by which pedestrian ordinarily reaches to the mid-

point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship.

(3) The boundaries of the premises shall be indicat3ed in the Licence.

(4) There shall be a single door for entry and exit and sales shall be conducted through without giving entry to the customers inside the premises.

29. **. Sale permitted at the licensed premises only**:

1. The leaseholder shall sell the liquor only at the premises specified in the licence.
2. No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere.
3. Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as lmay be specified by the Commissioner of Prohibition and Excise within the same area/locality where itr was originally established subject to payment of Rs.10,000/- as fee.

The argument of the learned for the petitioner is that the restriction contained in sub-rule (1) of Rule 27 regarding the location of the premises where the licensee can sell Indian Liquor and Foreign Liquor is uniformly applicable to all the municipal areas including Municipal Corporation areas and the exception contemplated in the second part of that sub-rule is only qua the distance from Highways. Learned counsel submitted that no liquor shop shall be opened in any Municipal Corporation, municipality/village/town/city or area/locality notified by the competent authority within 100 meters from the places of public worship, educational institutions and hospitals. He submitted that the restriction contemplated in sub-rule (1) of Rule 27 is in larger public interest and, therefore, the same must be treated applicable to all

areas including Municipal Corporations. He then argued that any other interpretation of sub-rule (1) of Rule 27 will render it unconstitutional because there can be no rationale reason or justification to relax the restriction of 100 meters in the matter of opening of liquor shop in a Municipal Corporation area.

Learned Government Pleader for Excise submitted that the exception contained in second part of sub-rule (1) of Rule 27 is applicable to the places of public worship, educational institutions and hospitals apart from the highways. According to her, relaxation has been granted in the case of Municipal Corporation areas keeping in view the fact that licensees of such areas have to pay substantially higher revenue as compared to other municipal areas, village/town/city and other notified areas.

Learned counsel for respondent No.3 opposed the writ petition and argued that his client should not be compelled to shift the location of shop from its present site because he had taken licence on the assumption that he will be entitled to locate the shop at any place within the specified area. He then submitted that respondent No.3 has already paid the licence fee and, therefore, it cannot be asked to change the location of the shop at this belated stage.

We have thoughtfully considered the respective arguments. A combined reading of Rules 27 and 29 of the Rules makes it clear that the licensee can sell liquor only at the premises specified in the licence and not at any other place. The licensee can shift the location of the licensed premises only after obtaining necessary permission from the Commissioner of Prohibition and Excise and after payment of the prescribed fee. Sub-rule(1) of Rule 27 lays down that the licensed premises shall be at least 100 meters away from the places of public worship, educational institutions, hospitals and fifty meters away from highways except in Municipal Corporations and 5 kms. belt area of the periphery of Municipal Corporations. On a plan reading of these rules, it becomes clear that the restriction contained in first part of sub-rule (1) in the matter of location of the premises is applicable to all the areas specified in the sub-rule including Municipal Corporations and the exception contained in second part of the rule is applicable only to the highways.

In our opinion, the restriction contained in sub-rule (1) of Rule 27 regarding location of the liquor shop is meant to serve the larger public interest. If a liquor shop is allowed to run near the place of worship, it is bound to hurt the feelings and

sentiments of the people. Likewise, if the liquor shop is allowed to be located near educational institutions, the same is bound to jeopardize studies of the children and their future. If the licensee runs liquor shop within 100 meters of the hospital, it is bound to cause grave inconvenience to the patients.

In the above backdrop, it is not possible to find any reasonable basis for making a distinction between the Municipal Corporation areas on one hand and municipalities/villages/town areas etc., on the other hand. If the restriction is reasonable valid qua municipalities/villages, towns etc., there can be no justification to relax the restriction in respect of Municipal Corporation areas.

If sub-rule (1) of Rule 27 is interpreted in the manner suggested by the learned Government Pleader for Excise, the same is liable to be struck down on the ground of violation of Article 14 of the Constitution because there is no rationale in classifying the Municipal Corporation areas on the one hand and municipalities/villages/towns/cites etc. on the other hand into two groups for the purpose of imposition of restriction on the location of the premises for sale of Indian Liquor and Foreign Liquor. In any case, there is no nexus between the classification sought to be made and the object sought to be achieved by imposing restriction on the location of the licensed shop within 100 meters of the public places of worship, educational institutions and hospitals.

In the result, the Writ Petition is allowed. Sub-rule (1) of Rule 27 of the Rules, in so far as it permits location of premises for sale of liquor near places of worship, educational institutions and hospitals, is declared violative of Article 14 of the Constitution and is struck down. The official respondents are ordained not to grant permission for location of the premises for sale of Indian Liquor and Foreign Liquor within 100 meters of the public places of worship, educational institutions and hospitals in any Municipal Corporation area in the State.

Respondent No.3 is directed to re-locate its liquor shop and shift the same from the present location within a period of four weeks from today so as to bring it in conformity with sub-rule (1) of Rule 27 of the rules. If respondent No.3 fails to shift the shop within the specified time then the official respondents shall ensure that the shop of respondent No.3 is re-located in such manner that the same is beyond the distance prescribed under Rule 27(1).

While disposing of the writ petition in the manner indicated above, we deem it proper to suo motu take cognizance of the possible location of liquor shops within a distance of 100 meters from the places of public worship, educational institutions and hospitals and call upon the Commissioner of Prohibition and Excise, State of Andhra Pradesh to get report from the officers subordinate to him who are operating in various Districts of Andhra Pradesh and submit a report to this Court by June 19, 2006 regarding the location of liquor shops in violation of Rule 27(1) of the Rules, as it sands now.

The registry is directed to register this direction as a separate petition in public interest and list the case before the Court on 22.6.2004.

G.S. SINGHVI, CJ

10th April, 2006 P. LAKSHMANA REDDY, J

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